

STRATEGIC GOAL 2

A SECURE WORKFORCE

Promote the Economic Security of Workers and Families



DOL is committed to promoting the economic security of workers and their families by protecting workers' hours, wages, and other job conditions; providing unemployment and compensation benefits when workers are unable to work; and expanding, enhancing, and protecting pension, health care, and other benefits. Priorities are to increase compliance with minimum wage and overtime requirements; promote secure retirements for working Americans; provide more pensions for women and employees of small businesses, broaden access to health care, and shorten periods of unemployment in those areas suffering from rapid economic change.

A Maryland-based fast food franchiser has worked with DOL's Employment Standards Administration to become a model employer of teenage workers.

Photo by: Michael Carpenter

OUTCOME
GOAL 2.1 -
INCREASE
COMPLIANCE
WITH WORKER
PROTECTION
LAWS

Overview

The Department of Labor administers and enforces more than 180 Federal laws. These mandates and their governing regulations cover over 10 million employers and 130 million workers in various workplace activities. DOL enters the new millennium having recently celebrated both the 62nd anniversary of the Fair Labor Standards Act (FLSA), which established minimum wage, overtime standards and child labor restrictions, and the 26th anniversary of the Employee Retirement Income Security Act (ERISA), which protects the integrity of private pension, health, and other employee benefit plans. While these hallmark worker protection laws have endured, they have also grown increasingly complex to administer with the dynamic and complex changes that are occurring in America's workforce.

Serving the Public

In furthering the economic security and welfare of workers and families, the Department utilizes a multi-pronged approach which includes enforcement, education, partnership, and recognition, and involves all segments of business and industry—contractors, manufacturers, retailers, consumers, worker advocacy groups, financial and health care communities and unions.

The DOL organizations dedicated to achieving this goal are the Employment Standards Administration and the Pension and Welfare Benefits Administration. Both agencies have developed compliance assistance programs that encourage up-front compliance through public education and outreach, as opposed to traditional enforcement techniques. In addition, significant resources are devoted to increasing public access to vital information used to monitor and secure entitlements. An informed public enables individuals and practitioners to better understand their rights under the law. Each year, the Department distributes thousands of publications and pamphlets that provide basic information about voluntary compliance, and staff conduct dozens of educational meetings, conferences, and seminars, as part of the DOL outreach effort.

Challenges

The primary challenge for DOL's worker protection agencies in the 21st century will be to adapt to the changes occurring in the American workforce. Virtual workplaces, aging workers, increased numbers of women and minorities, immigration, organized labor, the growth of small businesses, and the ongoing shift from a manufacturing to a service economy will all be important factors as U.S. businesses comply with worker protection laws in the future. The use of technology can assist the Department to more effectively protect workers' benefits and rights. For example, electronic government initiatives provide more readily accessible technical assistance and disclosure of public records, and electronic form filing such as the newly implemented ERISA Filing Acceptance System (EFAST). In the future, toll-free customer service "Help Desks" may provide new opportunities for interactive assistance between the Department and its customers.

PROTECT LOW-WAGE WORKERS

Goal 2.1A: Increase compliance with labor standards laws and regulations including young workers to 45 percent (6 percent increase over FY 1998 performance) in the Los Angeles garment industry and by 5 percent in poultry processing and the nursing home industry. Establish baseline for forestry and the agricultural commodity of garlic.

Results: The goal of increasing compliance was not met. Compliance with labor standards laws and regulations was statistically unchanged in the Los Angeles garment industry, and declined in the poultry processing industry and nursing homes. Compliance baselines were established for forestry (30 percent) and the agricultural commodity of garlic (38 percent).

Program Description: DOL's Employment Standards Administration (ESA) is responsible for administering and enforcing laws that establish the minimally acceptable standards for wages and working conditions in this country. These labor standards statutes -- including the Fair Labor Standards Act (FLSA), which establishes the minimum wage, overtime standards, and child labor restrictions -- protect low-wage workers and the working poor.

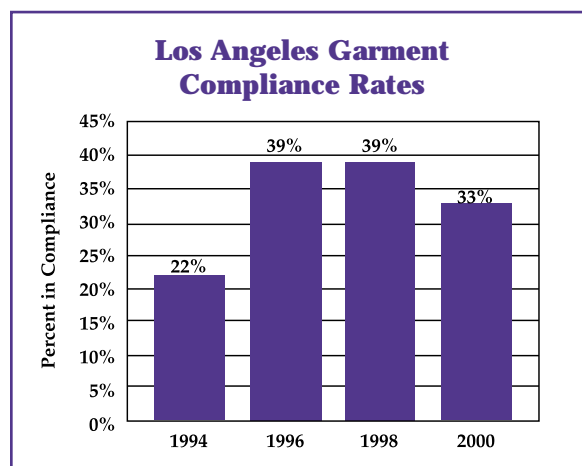
Analysis of Results: It is ESA's experience that many of these industries' workers are among the most vulnerable -- immigrants, minorities and women -- who are easy targets for exploitation, and who rarely complain to Government authorities. Labor standards compliance problems in these

industries are pervasive and serious. The factors that led ESA to target these industries -- increasing reliance on immigrant and minority workforces, intense external competitive pressures, high turnover rates, and rapid changes in the industries -- are not only still present, but in some instances have intensified, especially given the high employment levels in recent years. Increasing numbers of immigrant workers in poultry processing, and more frequent bankruptcies and other financial disruptions in the nursing home industry, have made the challenge of increasing compliance more difficult. The garment manufacturing industry, with about 700,000 domestic workers, continues to face fierce competition from off-shore manufacturing. In light of the extrinsic factors affecting compliance in these industries, overtime violations, in particular, have persisted and in some cases increased.

An industry specific analysis of the results and strategies follow.

Los Angeles Garment Industry

Analysis of Results: The 2000 Los Angeles garment survey found an overall level of compliance at 33 percent -- a level statistically unchanged from the prior surveys in 1996 and 1998 -- but still higher than the baseline of 22 percent in 1994. As with earlier surveys, compliance with minimum wage requirements was



higher than with overtime. Just under half (46 percent) of the firms investigated were in compliance with minimum wage provisions, while 40 percent of firms were in compliance with the FLSA overtime provisions.

The survey reaffirms ESA's earlier findings that monitoring of contractor shops by manufacturers promotes higher levels of compliance. About 10 percent of shops not monitored were in compliance with the minimum wage and overtime provisions, while the compliance rate for shops subject to a thorough monitoring program was 44 percent. The survey findings also suggest that compliance is improved by a contractor's ability to bid for contract work and renegotiate prices with manufacturers when circumstances change improves compliance.

Strategies: ESA pursues a multi-pronged intervention strategy combining enforcement (including targeted investigations and assessments of penalties) with compliance assistance (i.e., seminars for employers and town hall meetings for workers), and partnerships (like compliance agreements with multi-establishment employers and relationships with other Federal, State and local government agencies). In light of the stagnant compliance levels in the garment manufacturing industry in Los Angeles, ESA is enriching its intervention strategies and raising the stakes at all levels of the industry -- contractor shops, manufacturers and retailers.

In FY 2001, ESA has strengthened initiatives to target prior violator contractors and seek remedies (fines, liquidated damages, and injunctions) against contractors that are repeat violators. Egregious violators are

being referred to U.S. Attorneys for consideration of criminal prosecution. Manufacturers who fail to comply with DOL Compliance Monitoring Agreements are also a focus. The "hot goods" provision of the FLSA is being invoked where appropriate to encourage additional manufacturers to implement compliance monitoring programs. ESA plans to seek injunctions against manufacturers with repeat violations and contempt citations against manufacturers that violate injunctions. Finally, during FY 2001, ESA will begin including limited investigations of retailers' private label production.

Poultry Processing

Analysis of Results: The 2000 compliance results for poultry processors are somewhat mixed. The overall compliance rate is zero -- in comparison to a less than 40 percent compliance level in 1997 (the baseline year for this industry). The survey's findings can be partially attributed to changes in the survey approach reflecting ESA's increased experience with industry employment practices and in some individual employer pay practices.

Unlike the initial survey, which focused heavily on chicken-catching crews, the 2000 survey looked more closely at the pay practices of in-plant employment and temporary help agencies. The FY 2000 survey found improvement in the overall compliance of chicken-catching (live haul) crews which increased from 40 percent in 1997 to 56 percent.

Overtime violations were found in all of the processors surveyed. As in 1997, the most common in-plant finding involved the failure of employers to compensate workers for

the time spent putting on, removing, sanitizing and cleaning gear and equipment at the beginning and end of shifts and before and after meal breaks. Additional overtime violations resulted from the failure of employers to compensate workers appropriately for breaks.

Improper equipment deductions and the misclassification of certain workers as FLSA exempt also resulted in violations. Family and Medical Leave Act violations (new in the 2000 survey) were found in two plants, as were child labor violations.

Strategies: Some portion of the compliance improvement for live-haul crews may be attributed to ESA's education/outreach efforts and to Departmental (and private) litigation. Assistance to the industry remains a crucial strategy for promoting compliance for in-plant workers. ESA will, in addition, explore new outreach tools to educate workers -- particularly the non-English speaking population -- about basic labor standards rights. The ongoing dialogue with several major poultry processors to change employment practices that commonly result in violations will continue. As with other low-wage initiatives, ESA plans to use and evaluate its existing enforcement tools, e.g., litigation, civil money penalties and other appropriate sanctions, as necessary.

Nursing Home Industry

Analysis of Results: The FY 2000 nursing home survey found 40 percent of facilities investigated in compliance with the FLSA minimum wage, overtime and child labor requirements -- a drop from the 70 percent compliance level found in 1997. The parameters of the 2000

survey were somewhat different from those employed in 1997 and a precise comparison is difficult. However, the results still suggest a decline in overall FLSA compliance. (If survey results were normalized for comparison purposes, the difference would be 67 percent compliance in 1997 versus 55 percent compliance in 2000.)

As in 1997, overtime violations were the most common with 84 percent of non-compliant nursing homes in violation of the overtime provisions. The nature of overtime violations shifted from the improper calculation of the "regular rate" of pay (the rate on which the additional overtime premium is computed) in 1997 to misapplied professional and administrative FLSA exemptions in 2000. However, the greatest number of employees subject to violation were those not compensated for hours worked during their meal periods. Fifteen percent of facilities investigated had child labor violations compared to 6 percent in 1997. Many of the overtime violations, and some of the child labor violations, may be symptomatic of the industry's increasing staff shortages.

Minimum wage violation rates in the nursing home industry increased slightly from 4 percent in 1997 to 7 percent in 2000.

Strategies: Based on the results of the 1997 survey findings, ESA had anticipated that many of the identified issues could be addressed by increased compliance assistance augmented by selectively targeted investigations in those geographic regions that demonstrated lower compliance rates (the Northeast and Midwest). Given the results of the 2000 survey, however, ESA has

modified its strategies for affecting compliance in this industry. Compliance assistance remains an important component. In addition, ESA has begun in FY 2001 to focus increased attention on those nursing homes nationwide that either have a history of prior violations, are owned by a nursing home chain with a history of corporate-wide non-compliance, and/or have been identified by the Health Care Finance Administration as experiencing staffing deficiencies. ESA also plans to increase the assessment of civil money penalties and to pursue litigation where appropriate to increase the consequences of noncompliance for recalcitrant companies.

Goal Assessment: The long-term goal of increasing compliance in the garment manufacturing, poultry processing, agricultural commodities, and health care industries remains unchanged at this time. DOL is exploring, however, whether other measures of the effectiveness of intervention strategies may be warranted. ■

EFFECTIVE ENFORCEMENT OF LABOR STANDARDS

Goal 2.1B: Increase compliance by 5 percent among employers, which were previous violators, and the subject of repeat investigations in the Los Angeles garment industry, poultry processing and nursing homes; and establish baselines for forestry and the agricultural commodity of garlic.

Results: The goal to increase compliance among prior violators in the poultry processing and nursing home industries was not met. Compliance declined among reinvestigated employers in the poultry processing and nursing home industries from previous measurements, and goal accomplishment could not be measured for the Los Angeles garment industry. A compliance baseline was established for forestry (15 percent), but an insufficient number of employers precluded a statistically valid baseline for the commodity of garlic.

Program Description: DOL's Employment Standards Administration (ESA) is responsible for administering and enforcing laws that establish the minimally acceptable standards for wages and working conditions in this country. These labor standards statutes -- including the Fair Labor Standards Act (FLSA), which establishes the minimum wage, overtime standards, and child labor restrictions -- serve to protect the most vulnerable workers in the workplace: low-wage workers and the working poor.

Analysis of Results: This goal is used as a measure of the effectiveness and lasting value of ESA's intervention strategies, and represents improvement from full non-compliance. The same extrinsic factors

and industry dynamics that affect overall compliance rates in the targeted industries -- competitive pressures and rapid changes -- impact levels of compliance among prior violators. Increases in compliance rates for prior violators have slowed since earlier survey findings, much as overall compliance in the targeted industries has declined.

The survey measuring approach also affects the reported results. Both the poultry and nursing home industries are characterized by large multi-establishment employers that incur violations at some establishments and not at others. In measuring recidivism, a violation at any establishment owned by a large corporate entity with a history of non-compliance (whether at the same location or not) would be characterized as a repeat or recurring violation. This method permits the Department to measure not just the effectiveness of ESA's intervention strategies at single establishments, but how those strategies achieve lasting corporate-wide compliance, and typically results in higher recidivism rates. For example, if the recidivism sample for the nursing home survey had been limited to only those firms that had prior violations at the same location, then the compliance level among repeat violators would have been 51 percent as opposed to 41 percent.

An industry specific analysis of the results follows.

Los Angeles Garment Industry

With regard to the Los Angeles garment industry, ESA determined that the compliance baseline established in 1998 did not include a large enough sample to be statistically reliable. Therefore, a statistically valid compliance baseline of 37 percent was

established this year using a valid sample size.

Poultry Processing

Analysis of Results: The goal of increasing compliance by five percent was not met as the compliance survey found none of the employers investigated in full compliance. The survey found no difference in compliance levels for those poultry processing plants that had a prior violation history and those that had never been investigated in the past. These results may be largely attributed to the shift in survey focus from live-haul crews to in-plant workers, the changes in employer pay practices, external industry pressures and the control exercised by the 23 corporations that operate the 51 plants investigated (an average of two plants per corporate entity).

Strategies: In low-wage industries, ESA pursues a multi-pronged intervention strategy of enforcement (including targeted investigations and assessment of penalties); education/outreach (including compliance seminars for employers and town hall meetings for workers); and partnerships (such as compliance agreements with multi-establishment employers and relationships with other Federal, State, and local government agencies). Strategies for affecting overall compliance in the poultry processing industry are also relevant for increasing compliance among prior violations. Given the lack of significant improvement in compliance rates following an intervention, ESA has modified its strategy in FY 2001 in part by increasing the consequences for noncompliance. In particular, the use of litigation and civil money penalties against recalcitrant employers is being expanded to examine the effect on

changing ongoing violative practices. Finally, the Department's discussions with the major poultry processors to secure changes in certain employment practices will, where successful, address non-compliant behavior on a broader corporate-wide scale.

Nursing Home Industry

Analysis of Results: The goal of increasing compliance by 5 percent was not met, as the compliance survey found a 41 percent level of compliance. In comparison, 44 percent of nursing homes investigated for the first time were in compliance. Of those nursing homes still in violation following an intervention, most (70 percent) were found with violations of a different nature. Significantly fewer violators in the 2000 survey were found engaging in the same violations for which they were previously cited.

Strategies: As with other low-wage industries, strategies that escalate the negative consequences associated with non-compliant behavior -- collecting civil money penalties, litigation, and publicizing violations -- have been expanded in FY 2001. ESA is focusing compliance assistance and enforcement attention on nursing homes nationwide in FY 2001, with a special emphasis on past violators and multi-establishment corporations with a history of violations.

Goal Assessment: The goal of increasing compliance among prior violators subject to repeat investigations remains unchanged at this time. ESA will, however, examine existing measures and explore other methodologies to assess whether there are more effective means to assess the effectiveness of enforcement interventions on future compliance. ■